(1)

...reme Cou...

No. 01-586 MAR - 5 2001

OFFICE OF THE CLERK

In The

Supreme Court of the United States

CLIFFS ON THE BAY CONDOMINIUM ASSOCIATION,

Petitioner,

v.

EARL D. SMITH AND SUZANNE C. SMITH,

Respondents.

On Petition For A Writ Of Certiorari To The Michigan Supreme Court

PETITION FOR A WRIT OF CERTIORARI

ROBERT M. MEISNER
Counsel of Record
RICHARD M. DELONIS
MEISNER & ASSOCIATES, P.C.
30200 Telegraph Road, Suite 467
Bingham Farms, MI 48025-4506
(248) 644-4433
Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

5 cy

QUESTIONS PRESENTED

I. Whether due process requires an agency of a state government to send constitutionally required notice of official proceedings to a corporation at an address which, in accordance with state law, the corporation had furnished to the state for the service of process.

II. Whether the Michigan Supreme Court committed fundamental error in holding that the constitutional sufficiency of notice for due process purposes is determined by looking only to the statutory provisions on their face, without regard to whether constitutionally sufficient notice was actually provided to the affected party in the particular case.

III. Whether the Petitioner association received constitutionally sufficient notice of the tax forfeiture proceedings in this case when such notice was sent to a stale address for the association, the notice was returned as undeliverable as addressed, and the current address was readily available.

TABLE OF CONTENTS

Page

OPINIONS BELOW 1

JURISDICTION 1

UNITED STATES CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 1

STATEMENT OF THE CASE 2

A. Background And Prior Proceedings 3

B. Michigan Circuit Court Proceedings And Decision 6

C. Michigan Court Of Appeals' Decision 6

D. Michigan Supreme Court's Decision 7

REASONS FOR GRANTING THE PETITION 8

I. THIS COURT SHOULD GRANT CERTIORARI TO DECIDE THE IMPORTANT CONSTITUTIONAL QUESTION OF WHETHER DUE PROCESS REQUIRES THAT WHERE A CORPORATION, IN ACCORDANCE WITH STATE LAW, FURNISHES THE APPROPRIATE STATE AGENCY WITH AN ADDRESS FOR SERVICE OF PROCESS, EVERY AGENCY OF STATE GOVERNMENT MUST SEND CONSTITUTIONALLY REQUIRED NOTICE OF OFFICIAL PROCEEDINGS TO THE CORPORATION AT THAT ADDRESS. 10

TABLE OF CONTENTS

Page

II. THE HOLDING OF THE MICHIGAN SUPREME COURT THAT THE CONSTITUTIONAL SUFFICIENCY OF NOTICE FOR DUE PROCESS PURPOSES IS DETERMINED BY LOOKING ONLY TO THE STATUTORY PROVISIONS ON THEIR FACE, WITHOUT REGARD TO WHETHER CONSTITUTIONALLY SUFFICIENT NOTICE WAS ACTUALLY PROVIDED TO THE AFFECTED PARTY IN THE PARTICULAR CASE, CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT AND WITH DECISIONS OF OTHER STATE COURTS OF LAST RESORT. 14

III. THE DECISION OF THE MICHIGAN SUPREME COURT IN THE PRESENT CASE IS SO CONTRARY TO FUNDAMENTAL PRINCIPLES OF DUE PROCESS, AS SET FORTH IN PRIOR RELEVANT DECISIONS OF THIS COURT, AS TO WARRANT SUMMARY REVERSAL OF THAT DECISION BY THIS COURT 19

CONCLUSION 22

APPENDIX A .....App. 1

APPENDIX B.....App. 17

APPENDIX C.....App. 25

APPENDIX D .....App. 28

APPENDIX E.....App. 30

TABLE OF AUTHORITIES

Page

CASES:

Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) 15

Consolidated Rail Corp. v. Michigan, 976 F. Supp. 1085 (WD Mich.1996) 18

Covey v. Town of Somers, 351 U.S. 141 (1956) 16

Dow v. Michigan, 396 Mich. 192, 240 N.W.2d 450 (1976) 6

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) 13

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) 12, 17, 19, 20

New York v. New York, N. H. & H. R. Co., 344 U.S. 293 (1953) 17

Robinson v. Hanrahan, 409 U.S. 38 (1972) 16, 21

Tracy v. Chester Co., Tax Claim Bureau, 489 A.2d 1334 (Pa. 1985) 17, 18

Walker v. City of Hutchinson, 352 U.S. 112 (1956) 17

STATUTES:

M.C.L.A. § 450.1911 4

M.C.L.A. § 450.2911 4

PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

Cliffs on the Bay Condominium Association ("the Association") respectfully petitions for a writ of certiorari to review the judgment of the Michigan Supreme Court in this case.

OPINIONS BELOW

The Opinion of the Michigan Supreme Court (App. A, *infra*, 1-16) is reported at 463 Mich. 420. The decision of the Michigan Court of Appeals (App. B, *infra*, 17-24) is reported at 226 Mich. App. 245. The Order of the Circuit Court (App. C, *infra*, 25-27) is unreported.

JURISDICTION

The judgment of the Michigan Supreme Court was entered on October 10, 2000. A timely petition for rehearing was denied on December 4, 2000. (App. D, *infra*, 28-29). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

UNITED STATES CONSTITUTIONAL PROVISIONS AND STATE STATUTES INVOLVED

The provisions of the United States Constitution and Michigan statutes relevant to this action arising from the tax forfeiture sale of a parcel of land are set forth in Appendix E, *infra*, 30-31.

STATEMENT OF THE CASE

The Michigan Supreme Court in this case flagrantly ignored or otherwise departed from constitutional due process doctrine promulgated by prior decisions of this Court, and issued a per curiam decision that also directly conflicts with decisions of the high courts of other states, when it ruled that notice of a tax forfeiture sale knowingly sent to a long outdated address was sufficient to satisfy due process requirements, even though the correct and current address was on file with the State and could have been readily ascertained. The fundamental unfairness of the end result in this case, the deprivation of the Petitioner Association's property rights without the receipt of any notice, is amplified by the fact that the Association, a nonprofit corporation, was required by State law to supply a current address for the service of process, and did so; yet the state agency that issued the notice of the forfeiture proceedings did not bother to obtain and use such address. Instead, the State simply went ahead with the forfeiture proceedings, knowing full well that the Association did not receive notice of the proceedings. The decision has grave implications for other corporations and business entities not only in the State of Michigan, but in other states across the country as well. This case presents an important issue with respect to the notice component of procedural due process, especially as it relates to corporate entities, which warrants review by this Court.

A. Background and Prior Proceedings

The essential and relevant facts in this case are not in dispute. This case involves a parcel of undeveloped land (the "disputed property") which lies adjacent to the Cliffs on the Bay Condominium (the "Condominium Project"), located in Ypsilanti, Michigan. The Association is a Michigan nonprofit corporation that administers the Condominium Project, and its members are comprised of the co-owners of the Condominium Project. The Association received title to the disputed property in 1973. Respondents (the "Smiths") now purport to have obtained title to that land pursuant to a tax forfeiture sale.

The Association and its members were not aware that the disputed property and the land comprising the Condominium Project were separate parcels. Rather, it was believed that the disputed property was already a part of the Condominium Project, and that it was a general common element thereof.[1] Accordingly, the Association and its members also believed that the property taxes they paid also encompassed that parcel of property and they had no other reason to think otherwise, because the Association never received separate tax bills for the disputed property.[2] Unbeknownst to the Association, property

---

[1] A "general common element", as defined by Michigan law, is a portion of the Condominium Project other than the condominium units that is not limited to the exclusive use of less than all of the co-owners. Each of the co-owners has an undivided interest in the common elements.

[2] The Association does not pay real property taxes on the common elements of the Project. Rather, the co-owners each pay a proportionate share of same that is included in their individual tax bills.

taxes were assessed on the disputed property, although it is stipulated that, for some unknown reason, the Township of Ypsilanti did not place the disputed property on its tax rolls until 1976.

Under Michigan law, as in other states, corporations are required to furnish the state with a current address for, among other things, the service of process.[3] The original address for the Association, when it was incorporated in 1972, was located in Birmingham, Michigan. In 1975, the Association filed a Certificate of Change of Registered Office with the State of Michigan's Department of Commerce, Corporation and Securities Bureau[4], which supplied an address in Ann Arbor, Michigan as its new registered office. Subsequently, in 1979, the Association filed another Certificate of Change of Registered Office listing the office as now being located at an address in Ypsilanti, Michigan. There is no provision of Michigan law that required the Association to send copies of its changes of registered office to the Township of Ypsilanti or the Michigan Department of Treasury. When the first tax bill for the disputed property was sent in 1976, it was sent to the Association's "original" address in Birmingham, Michigan. By that time, however, the Association had an Ann Arbor, Michigan address and it did not receive that notice.

---

[3] *See* M.C.L.A. § 450.1911 and M.C.L.A. § 450.2911 (App., *infra*, 30-31).

[4] The Corporation and Securities Bureau in Michigan has since been renamed "Corporation, Securities, and Land Development Bureau".

Since the Association did not receive the tax bills for the property, the taxes went unpaid. Accordingly, a tax sale of the disputed property was held in 1980, and the property was ultimately deeded to the State of Michigan in 1981 in accordance with provisions of Michigan law. However, the Association never received a notice of the tax sale, either before or after it was held, nor did it receive any notices regarding its right to a hearing or right to redeem the property.

In 1982, the State of Michigan's Department of Treasury filed a "Proof of Notice to Owners of Significant Property Interest and Notice of Hearing" with the Washtenaw County Register of Deeds. The "Proof of Notice" claimed that the State of Michigan sent a Notice for Hearing to the Association regarding the sale of the disputed property. Significantly, however, the notice was sent to the Association's "original" Birmingham, Michigan address, which was then an invalid, stale address that was over five (5) years old. At the time that the notice from the State was allegedly sent, the Association had already filed *two* different changes of address with the State of Michigan's Corporation and Securities Bureau. Indeed, the "Proof of Notice" acknowledged that the Notice for Hearing was returned by the post office as "Not Deliverable As Addressed". The State, then, knew that the Association did not receive notice of the forfeiture proceedings and the right to a hearing. Nevertheless, the State proceeded anyway without any effort to obtain a valid address.

The State of Michigan conveyed the disputed property to the Smiths in 1987. After finally learning of the loss of the property and the conveyance by the State, the

Association recorded an "Affidavit" in 1991 with the county register of deeds claiming an interest in the disputed property as its fee title owner due to the failure of the State of Michigan to provide it with the notice required by due process and by statute regarding the disposition of the property or the Association's right to a hearing and redemption rights.

B. Circuit Court Proceedings And Decision

The Smiths commenced this lawsuit in the Circuit Court in March, 1996 to quiet title, and the Association filed a counterclaim, again asserting title to the property and/or the tolling of its redemption rights because it was not provided with due process. The Smiths filed a motion for partial summary disposition. The Association argued in its defense that it was denied its procedural due process rights due to the failure of the State to provide it with a notice of hearing or notice of its right to redeem. The Circuit Court Judge granted summary disposition to the Smiths, holding, in a truncated oral opinion, that the State's sending of the notice to the "last known address" of the Association, and recording the notice was sufficient to meet the notice requirements enunciated by the Michigan Supreme Court in *Dow v. Michigan*, 396 Mich. 192, 240 N.W.2d 450 (1976), or as otherwise codified by the State legislature.

C. The Court Of Appeals' Decision

The Association filed an appeal of the Circuit Court's order with the Michigan Court of Appeals. That Court reversed the Circuit Court's ruling, and held that the

State's "efforts" to notify the Association of the tax forfeiture proceedings did not satisfy due process requirements. App., *infra*, 17-24. Specifically, the Court of Appeals focused on the fact that the State failed to take action to attempt to ascertain the correct address for the Association when the notice was returned as "Not Deliverable As Addressed". The Court emphasized that "this inaction is rendered more indefensible by the fact that Defendant is a corporation required to maintain its current address with the Corporation and Securities Bureau." *Id.* at 22. The Court of Appeals, therefore, found that the Association was *not* afforded its right to due process, and the Court accordingly reversed the Circuit Court's entry of partial summary disposition for the Smiths, and instead granted summary disposition in favor of the Association. The Smiths filed a motion for rehearing with the Court of Appeals, which was denied.

D. The Michigan Supreme Court's Decision

The Smiths then filed an Application for Leave to Appeal with the Michigan Supreme Court. In lieu of granting the Application, the Michigan Supreme Court issued a Per Curiam Opinion summarily reversing the decision of the Court of Appeals without a full hearing. App., *infra*, 1-16. In its Opinion, the Michigan Supreme Court held that the mailing of the notice by the State to a corporation at its "tax address of record" in the manner provided by the legislature in Michigan's General Property Tax Act satisfies due process, even though the actual address of the corporation on file with the Corporation and Securities Bureau was different, and the corporation did not receive actual notice of the proceedings. Hence,

the Michigan Supreme Court only looked to the statutory notice procedure on its face and completely ignored the fact that the Department of Treasury made no effort whatsoever to provide actual notice to the Association in this case. The Court denied the Association's motion for rehearing.

REASONS FOR GRANTING THE PETITION

An individual's right to due process of law is, of course, a fundamental constitutional guarantee. It is a hallowed and inviolate right in our system of jurisprudence. The instant case presents an important issue that has direct and solemn implications on the breadth of that right, involving the nature of the efforts that must be undertaken to ensure that the notice component of this fundamental guarantee has actually been satisfied. The Michigan Supreme Court's Opinion in this case is in clear contradiction to prior decisions of this Court and with at least one decision of the Supreme Court of another state regarding the notice requirements of procedural due process. The decision has produced an egregiously unfair result in the present case and threatens an erosion of procedural due process itself.

The decision below condones the use of minimal effort in the provision to a party of notice of official proceedings, and portends to "lower the bar" as to what effort will pass constitutional scrutiny. At stake is the central question of the manner in which a state agency remits notice to a corporation of official proceedings that will impact the corporation's vested property rights, and

what efforts, given today's modern technology, should be employed in order to be deemed constitutionally sufficient. The Michigan Supreme Court's decision suggests that a state need not employ the simplest use of technology (i.e., even a telephone) in the state's efforts to obtain a correct address and provide notice to a party of an impending deprivation of rights. In so holding, the Court ignored important precedent and constitutional doctrine of this Court, and disregarded an integral aspect of constitutional due process analysis: whether sufficient notice was actually provided to the affected party in the particular case. The Michigan Supreme Court merely looked to the statutory notice procedures codified by the Michigan legislature, and finding that they appeared to be "constitutionally sound", brazenly proclaimed the State's notice efforts to be sufficient, without further substantive inquiry. Indeed, the Michigan Supreme Court scolded the Court of Appeals' decision as constituting "an improper intrusion into the Legislature's authority to regulate tax sale proceedings." App., *infra*, at 11-12. As the dissent below correctly pointed out, however, the shallow review used by the majority of the Michigan Supreme Court wrongfully "elevate[d] form over substance and achieve[d] an unjust result." App., *infra*, at 13.

This Court should grant certiorari to decide the important constitutional question presented by this matter in regard to the requirements of the notice element of procedural due process as applied to corporations and other similar business entities. Further, the Michigan Supreme Court decision is so plainly and egregiously wrong that it should not be permitted to stand and summary reversal is justified.

I. THIS COURT SHOULD GRANT CERTIORARI TO DECIDE THE IMPORTANT CONSTITUTIONAL QUESTION OF WHETHER DUE PROCESS REQUIRES THAT WHERE A CORPORATION, IN ACCORDANCE WITH STATE LAW, FURNISHES THE APPROPRIATE STATE AGENCY WITH AN ADDRESS FOR SERVICE OF PROCESS, EVERY AGENCY OF STATE GOVERNMENT MUST SEND CONSTITUTIONALLY REQUIRED NOTICE OF OFFICIAL PROCEEDINGS TO THE CORPORATION AT THAT ADDRESS

While this Court has previously expounded upon the constitutional requirements of the Due Process Clause of the Fourteenth Amendment in the context of providing notice of proceedings to individuals, *generally*, this case presents an important issue in this area that should be, but has not yet been, definitively resolved by this Court. Put succinctly, the question is this: When a corporation, pursuant to state law, furnishes the appropriate state agency with an address for the purpose of service of process, does due process mandate that every agency of state government send constitutionally required notice of official proceedings to the corporation at that address?

Although a corporation may have many offices in a state, state laws generally require that a corporation designate one address for the service of process. When such an address is submitted to the Corporation and Securities Bureau (to use the example in this case), modern technology facilitates placing such information in a database. The information can then be readily sent out to all other state agencies, and any agency (or anyone else) can obtain the corporate address from the Bureau. It also follows, then, that the corporation should be entitled to

rely on its compliance with state law and be assured that it will, in turn, receive notice of official proceedings at its registered address.

In the instant case, the Association, a non-profit corporation, dutifully reported its changes of address to the State's Corporation and Securities Bureau, as required by law. However, when it came time for the Michigan Department of Treasury to send notice of the tax forfeiture proceedings to the Association, it did not use or even inquire about the Association's address that was on file with the Corporation and Securities Bureau. Instead, the notice was sent to an obsolete address that was several years old, and the notice was predictably returned as "undeliverable". The result was that the Association received no notice at all, and, without court intervention, it purportedly has now lost its rights in the disputed property.

The disputed property was undeveloped and, therefore, was not assigned a street address to which the tax forfeiture notices could be sent. Hence, the notice could not be sent to the property itself. The importance, then, of the state utilizing the correct address of the "corporate owner" of the land could not be more clear. Without the correct address that was on file with the Corporation and Securities Bureau, it was virtually impossible that the notice would be actually received by the Association. Such a result is contrary to the basic premises underlying the concept of procedural due process. The notice allegedly sent by the State's Department of Treasury in this case was sent to the last address of record of the owner, as reflected on the tax rolls, but that was a 1975 address and it was 1981 at the time of the remittance of

the notice. The Association *did* have an address of record, which had been filed with the Corporation and Securities Bureau. In light of the existence of the designated address on file, it seems elementary that due process would require the Department of Treasury to contact the Corporation and Securities Bureau, so that it could obtain the correct address from the database.

An elementary and fundamental principle of due process is that the *notice must be reasonably calculated, under all the circumstances,* to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The means employed must be such as one desirous of actually informing the affected party might reasonably adopt to accomplish it. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

Due to modern technology, it is very easy for an agency of state government to use the corporation's address that is on file with another state agency, such as the Corporation and Securities Bureau, to send the corporation notice of official proceedings. It is that address that should be used by one desirous of actually informing the corporation. Anything less would not be notice reasonably calculated, under all the circumstances, to inform the corporation of such proceedings. Here, no burden is imposed on a state by requiring state agencies to use the corporation's address that is on file with the Corporation and Securities Bureau. In fact, the use of that address ensures that the corporation will actually receive the required notice.

Once the corporation furnishes its address to the Corporation and Securities Bureau, it should be entitled

to rely on its compliance with state law to ensure that it will actually receive notice of official proceedings. *See, e.g., Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982).[5] Indeed, the primary purpose underlying the requirement that a corporation "register" an address with the state is to designate the location where service of process can be made. It defies common sense to argue that a state agency is not, or should not be, required to use that address when sending notice of official proceedings to the corporation in order to comply with due process considerations. Yet that was the message of the Michigan Supreme Court in this case.

This Court should grant certiorari in the present case in order to decide the important question of whether, in this age of technology, due process requires that in providing notice to corporate entities, every agency of the state must send that notice to the address of the corporate entity that is on file with the designated state agency in accordance with the requirements of state law.

---

[5] In *Logan*, the Court found that a dismissal of an employment discrimination claim violated the due process rights of the claimant, where a state agency failed to convene a fact-finding conference in the time prescribed by law. The Court held that the claimant was entitled to assume that the agency would follow its own regulations, and was not responsible for the agency's failure to do so.

II. THE HOLDING OF THE MICHIGAN SUPREME COURT THAT THE CONSTITUTIONAL SUFFICIENCY OF NOTICE FOR DUE PROCESS PURPOSES IS DETERMINED BY LOOKING ONLY TO THE STATUTORY PROVISIONS ON THEIR FACE, WITHOUT REGARD TO WHETHER CONSTITUTIONALLY SUFFICIENT NOTICE WAS ACTUALLY PROVIDED TO THE AFFECTED PARTY IN THE PARTICULAR CASE, CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT AND WITH DECISIONS OF OTHER STATE COURTS OF LAST RESORT

Remarkably, in the present case, the Michigan Supreme Court, ignoring applicable constitutional doctrine propounded by this Court, engaged in a completely one dimensional analysis of the notice requirements of procedural due process. That is, the Court looked solely to the notice procedures contained in Michigan's General Property Tax Act to determine if the procedures, as designated in the statute, were constitutionally sufficient to meet due process requirements. The Court declared that the statutory provisions were adequate on their face, and thus concluded that the State's "attempt" to notify the Association was consistent with due process requirements. However, the mere review of the statute on its face, without any further inquiry, was improper, as the Court wholly failed to consider the remaining and equally important question of whether constitutionally sufficient notice was actually provided to the Association. Thus, in its zeal to simply "rubber stamp" the actions of the legislature, the Court disregarded the other necessary dimension of constitutional scrutiny. The Michigan Supreme Court asked the wrong question and so came up

with the wrong answer. The present case did not involve the constitutionality of the statutory procedures on their face, but whether in fact the Association received constitutionally adequate notice. The Michigan Supreme Court completely misunderstood applicable constitutional doctrine when it stated that, "For due process purposes, the focus must be on the constitutional adequacy of the statutory procedure and not on whether some additional effort in a particular case would have in fact led to a more certain means of notice." App., *infra*, 13. Quite to the contrary, as this Court emphasized in *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), it does not matter that the State may consider its own procedures to be adequate. The minimum procedural requirements of due process are a matter of federal constitutional law and, regardless of the adequacy of the statutory procedures on their face, the ultimate question is whether the affected party received constitutionally adequate notice in the particular case.[6]

Hence, it is evident that the legislature cannot be relied upon as the sole arbiter to determine what procedure(s) adequately meet constitutional due process requirements in a given matter. Rather, where an aggrieved party claims that it has been denied due process, it is up to the judiciary to review the circumstances

---

[6] In that case, the Court stated that "Minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action . . . The right to due process is conferred, not by legislative grace, but by constitutional guarantee." *Id.*, at 541.

to determine if due process requirements have been satisfied.

In a case strikingly analogous to the instant matter, this Court in *Robinson v. Hanrahan*, 409 U.S. 38 (1972), citing and relying upon the principles expounded by *Mullane*, found that due process requirements were *not* satisfied when the State of Illinois sent a notice of forfeiture proceedings to the home address (as reflected by the records maintained by the Secretary of State) of an individual that was, at the time, in custody in a county jail. The Illinois Supreme Court had ruled that the individual was not denied due process of law. This Court issued a unanimous Per Curiam Opinion that reversed the Illinois high court's decision. *Hanrahan* exemplifies the concept that the proper mode of due process analysis is to determine whether constitutionally sufficient notice was actually provided to the affected party in a particular case. A simple review of a state statute is insufficient. In *Hanrahan*, it was pointed out that, under Illinois law, the address of a vehicle owner must be registered with the Secretary of State, and that the Illinois vehicle forfeiture statute authorizes service by certified mail to the address that is listed in the records of the Secretary of State. Since that is the procedure that the state followed in that case, the state had complied with the statute. Yet, this Court looked beyond the mere statutory compliance and analyzed the question further, and ultimately concluded that the notice was constitutionally deficient because the state knew that the accused was not at the address to which the notice was sent.

Similarly, in *Covey v. Town of Somers*, 351 U.S. 141 (1956), a tax lien foreclosure case, this Court noted that

the local government complied with the notice provisions of the tax foreclosure statute. Nevertheless, the Court went further and carefully reviewed the particular circumstances of the case to determine if due process requirements were satisfied. The Court found that, despite complying with the statute, the notice was still constitutionally insufficient.

In *Mullane*, this Court made it clear that "statutory notice" may, in and of itself, not be enough to satisfy constitutional due process requirements:

> The statutory notice to property holders is inadequate when *under the circumstances* the notice is not reasonably calculated to reach those who could easily be informed by other means at hand.

Mullane, 339 U.S. at 319 (emphasis added). Accordingly, the Michigan Supreme Court's superficial analysis of the procedural due process issue in this case represents a significant departure from, and is entirely inconsistent with, prior decisions of this Court because it failed to consider the particular circumstances involved in the case.[7]

Additionally, the decision of the Michigan Supreme Court in the present case clearly conflicts with a decision of the Pennsylvania Supreme Court on the identical issue. In *Tracy v. Chester Co., Tax Claim Bureau*, 489 A.2d 1334

---

[7] *See also Walker v. City of Hutchinson*, 352 U.S. 112 (1956), and *New York v. New York, N. H. & H. R. Co.*, 344 U.S. 293 (1953), in which the Court also looked to the particular circumstances of the case in determining whether due process notice requirements were satisfied.

(Pa. 1985), the Supreme Court of Pennsylvania specifically examined the particular circumstances surrounding the state's attempt at providing notice of a tax foreclosure sale to the landowner. The facts in that case are indistinguishable from the facts of the present matter. In *Tracy*, as here, the notice of the tax sale proceedings was sent by certified mail to an inaccurate address, which resulted in the notice being returned as "undeliverable", and the landowner was consequently not informed of the proceedings. The county claimed that the tax bureau complied with all of the notice requirements of the applicable statute(s), and that the statute(s) required it to do nothing more than what it did. Despite this, the Pennsylvania Supreme Court found that merely meeting the requirements of the statute(s) was not enough, but more was required in order to satisfy due process concerns:

> [W]e hold that where a taxing authority intends to conduct a sale of real property because of nonpayment of taxes, it must notify the record owner of property by personal service or certified mail, *and where the mailed notice has not been delivered because of an inaccurate address, the authority must make a reasonable effort to ascertain the identity and whereabouts of the owners.*

Id., at 1338-1339 (emphasis added). Since the taxing authority did not make any effort to ascertain the whereabouts of the landowner after the notice was returned, the Court found that the landowner's right to due process was violated and the tax sale was set aside.[8]

---

[8] The same holding was reached in the matter of *Consolidated Rail Corp. v. Michigan*, 976 F. Supp. 1085 (WD Mich.

As illustrated above, the Michigan Supreme Court's analysis of the due process notice issue in the instant matter was incomplete and flawed, and the Court's Opinion is flatly inconsistent with prior decisions of this Court such as in *Mullane*, *Hanrahan*, and *Covey*, as well as at least one decision of a court of last resort in another state. A grant of certiorari, then, is warranted for this reason as well.

III. THE DECISION OF THE MICHIGAN SUPREME COURT IN THE PRESENT CASE IS SO CONTRARY TO FUNDAMENTAL PRINCIPLES OF DUE PROCESS, AS SET FORTH IN PRIOR RELEVANT DECISIONS OF THIS COURT, AS TO WARRANT SUMMARY REVERSAL OF THAT DECISION BY THIS COURT

In the decision below, the Michigan Supreme Court held that the Department of Treasury was under no obligation to undertake any additional efforts to attempt to notify the Association of the tax sale proceedings after the notice was returned by the post office as "Not Deliverable As Addressed". The holding is wrong and it is in direct conflict with the prior relevant decisions of this Court.

Mullane clearly dictated that, in order to survive constitutional scrutiny, the notice must be "reasonably calculated, under all the circumstances, to apprise interested

---

1996), wherein the Court held that, upon the return of a tax bill as undeliverable, it would be reasonable to expect a governmental entity to take some meaningful effort to ascertain the correct address of the property owner.

parties of the pendency of [state] action [against them] and afford them an opportunity to present their objections". *Id.*, at 314. Further, *Mullane* specified that, in attempting to provide notice, "[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Id.*, at 315.

Under the circumstances present in this case, the notice allegedly sent by the Department of Treasury to the Association at an invalid address was *not* reasonably calculated to inform the Association of its rights because the current address of the Association was readily and easily available to the Department through its "sister" Corporation and Securities Bureau. Neither an investigation nor even a remotely difficult effort was necessary to obtain the Association's correct address. Indeed, it can be fairly argued that the Department *knowingly* sent the notice to the wrong address. The Department simply did not direct the notice "to an address that was reasonably calculated" to reach the Association. When the notice was returned by the post office, and the Department of Treasury admittedly did not make any effort to ascertain the correct address, the Department unrefutably failed to utilize efforts that one desirous of actually informing another might reasonably employ, which *Mullane* recognized as a requirement in order to meet due process standards. The Department of Treasury's mailing of notice to a long outdated address was, quite frankly, tantamount to dropping the notice in a sewer, and, therefore, constituted no notice at all. "[W]hen notice is a person's due, process which is a mere gesture is not due process". *Id.*, at 315. The Department's "effort" at process

in this case was, for all practical purposes, a mere gesture because the mailing was destined *not* to reach the Association based on the use of an obsolete address, even though the Corporation and Securities Bureau actually did have a correct and current one on file, but the Department of Treasury failed to obtain and use it.

Clearly, the Michigan Supreme Court Opinion is also contradictory to this Court's decision in *Hanrahan*. The state in *Hanrahan* mailed notice of a vehicle forfeiture to the home address of an individual who was in the county jail. The Court in that case held that since the state knew that he was not at the address to which the notice was mailed, "it cannot be said that the State made any effort to provide notice which was 'reasonably calculated' to apprise appellant of the pendency of the forfeiture." *Hanrahan*, 409 U.S. at 40.

Similarly, in the present case, the Department of Treasury knew that the Association did not receive notification of the tax forfeiture proceedings when the notice was returned as "Not Deliverable As Addressed". Yet, no efforts were taken to obtain the Association's correct address, which could have easily been accomplished through a telephone call to the Corporation and Securities Bureau. The Department went ahead with the proceedings anyway, knowing full well that the Association would not have the opportunity to defend. A more egregious violation of procedural due process cannot be imagined. The undeniable and inescapable conclusion is that due process requirements were not satisfied here. However, the Michigan Supreme Court, in flagrant contradiction to *Hanrahan* and other relevant decisions of this Court, held otherwise.

The Michigan Supreme Court's erroneous decision has effectively rendered the Association's right to procedural due process a nullity. As it now stands, the Association has been deprived of its property without having ever received any notice, despite its own dutiful compliance with State law by supplying the State of Michigan with a valid address for the service of process. The result in this case is so egregious and is so contrary to the fundamental principles of procedural due process, that it is respectfully submitted that this Court should summarily reverse the Michigan Supreme Court's decision below.

CONCLUSION

Based on the above, the Petition for Writ of Certiorari should be granted, and (1) the judgment below should be summarily reversed, or (2) the case should be set for briefing and oral argument.

Respectfully submitted,

ROBERT M. MEISNER
Counsel of Record
RICHARD M. DELONIS
MEISNER & ASSOCIATES, P.C.
30200 Telegraph Road, Suite 467
Bingham Farms, MI 48025-4506
(248) 644-4433
Counsel for Petitioner

APPENDIX A

Michigan Supreme Court
Lansing, Michigan 48909

Opinion

Chief Justice	Justices
Elizabeth A. Weaver	Michael F. Cavanagh
	Marilyn Kelly
	Clifford W. Taylor
	Maura D. Corrigan
	Robert P. Young, Jr.
	Stephen J. Markman

FILED OCTOBER 10, 2000

EARL D. SMITH and
SUZANNE C. SMITH,

Plaintiffs-Appellants,

No. 111587

v

CLIFFS ON THE BAY
CONDOMINIUM ASSOCIATION,

Defendant-Appellee.

PER CURIAM

This case involves a constitutional challenge to the procedures by which the plaintiffs obtained a tax-sale title to property formerly owned by the defendant association. Each party asked the circuit court to quiet title. The court granted summary disposition for the plaintiffs. However, the Court of Appeals reversed, ruling that the

association was not given constitutionally adequate notice of the tax sale and related redemption periods.

The case returns to this Court after a remand for additional findings. We conclude that mailing of tax delinquency and redemption notices to a corporation at its tax address of record in the manner required by the General Property Tax Act, MCL 211.1 *et seq.*; MSA 7.1 *et seq.*, is sufficient to provide constitutionally adequate notice. We therefore reverse the judgment of the Court of Appeals and reinstate the circuit court's judgment in favor of the plaintiffs.

I

During the 1960s a developer named C. James Davis constructed an apartment complex in Washtenaw County's Ypsilanti Township. None of the apartment buildings were constructed on the adjacent parcel that is the subject of this case. The record does not reveal whether the disputed parcel was included within the original description of the land on which the apartment complex was built. Davis later transferred ownership to a partnership called "Bay Properties." There were two partners, Keith A. Metcalf and John McKee. In 1972, Bay Properties converted the existing apartments to condominium ownership.

On May 26, 1972, Davis, Metcalf, and McKee created the defendant nonprofit corporation to be the managing entity for the condominiums. The original articles of incorporation show Metcalf as the association's resident agent and his mailing address as 770 South Adams, Suite

110, Birmingham, Michigan, 48011. Other contemporaneous documents show that same address for Bay Properties.

On June 7, 1972, Bay Properties conveyed the land beneath the condominium improvements to the association. The disputed parcel was not included in the deed's land description.

On October 10, 1973, by a separate quitclaim deed, Bay Properties conveyed the disputed parcel to the association, stating its address as 770 South Adams, Suite 202, Birmingham, Michigan, 48011.

The record contains no further information about what became of Bay Properties, Davis, Metcalf, or McKee. Nor does it show whether anyone affiliated with the association continued to occupy the Birmingham address after 1973.

The disputed parcel is "green space" adjacent to the condominium complex. The association says that it and the owners of the individual condominium units have always assumed that the disputed parcel was included within the description and tax bills for the entire complex. The circuit court's order on remand, based on a stipulation by the parties, found that for unknown reasons the township did not place the disputed parcel on its tax rolls until 1976. Before then, on October 3, 1975, the association had filed with the Corporation and Securities Bureau a notice that both its resident agent and mailing address had changed. It identified the Ann Arbor Trust Company as the new resident agent, stating the new

address as P.O. Box 12, Ann Arbor, Michigan, 48107.[1] Nothing required the association to send a copy of this notice to the township, and the association apparently did not do so.

Even after the proceedings on remand, the parties and the circuit court have been unable to establish the details of many of the events relevant to the sending of notices and proceedings regarding the delinquent taxes, tax sale, redemption periods, and transfer of title. Much of this results from the lapse of time and the inadequacy of the available records.

While the inadequacy of the record leaves uncertainties, they are not critical for the disposition of this case. So far as can be determined, all notices relating to taxes on and the tax sale of the disputed parcel were sent to the Birmingham address. The association does not contend that the township, county, or state failed to give any of the required notices in the manner specified in the statutes. Rather, the association's claim is that the sending of notices to its former address in Birmingham was inadequate. The only information in the record indicating that the township, county, or state had reason to believe that the Birmingham address was not correct is in the state's affidavit regarding the notice of hearing under MCL 211.131e; MSA 7.190(3), which says that the notice was returned by the post office as "Not Deliverable As Addressed."

---

[1] On two later occasions, August 1979, and January 1985, the association notified the Corporation and Securities Bureau of additional changes of its resident agent and mailing address.

The township first issued a tax bill for the parcel in 1976, mailing it to the association at its by-then obsolete Birmingham address. The township has no record showing either that the taxes were paid or were not paid. The township's records show that in 1977, the tax bill was sent to the Birmingham address, and that the taxes were not paid.

After a tax bill has gone unpaid for three years, the property may be sold to satisfy the delinquent tax bill plus interest and penalties. MCL 211.60; MSA 7.104. Here, the tax sale was in 1980 to satisfy the delinquent 1977 tax bill.[2] No private party purchased the property, and it was bid in to the state as provided in MCL 211.67; MSA 7.112.

In the fall of 1987, after the expiration of the applicable redemption periods, the state issued a deed to the plaintiffs under MCL 211.131; MSA 7.188. The deed was recorded on November 13, 1987. Tax bills for 1987 and all subsequent years have been sent to the plaintiffs and paid by them.

In late 1990 or early 1991, the association learned that the plaintiffs claimed to own the disputed parcel and on February 27, 1991, recorded an affidavit that served to cloud the plaintiffs' title. After efforts to settle the dispute failed, plaintiffs filed this action on March 5, 1996, asking the circuit court to quiet their title. The association filed a counterclaim seeking the same relief. The circuit court granted summary disposition for the plaintiffs.

---

[2] The tax bills for 1978 and 1979 were also returned after being unpaid. There was no separate tax sale with respect to them, however.

II

Following the circuit court's decision, the association appealed, and the Court of Appeals reversed. 226 Mich App 245, 573 NW2d 296 (1997). For its due process analysis, the Court of Appeals relied heavily on our decision in *Dow v Michigan*, 396 Mich 192, 240 NW2d 450 (1976). It focused on the language of *Dow* that the state must employ "such means 'as one desirous of actually informing [the property owner] might reasonably adopt' to notify [the owner] of the pendency of the proceedings." 396 Mich at 210.

In the present case, the Court of Appeals faulted the state for failing to make any additional effort to ascertain the association's current address when the notice of hearing under MCL 211.131e; MSA 7.190(3) sent by certified mail was returned as undeliverable. The Court of Appeals said:

> In the present case, defendant did not receive notice sufficient to satisfy due process concerns. Plaintiffs do not contend that defendant received actual notice, but assert that the attempts to notify defendant of the pending proceedings were sufficient. However, it would be reasonable to expect a county, upon the return of a tax bill as undeliverable, to take some meaningful effort to obtain the correct address of the property owner. *Consolidated Rail Corp. v Michigan*, 976 F Supp 1085, 1087 (WD Mich, 1996), citing *City of Grand Rapids v Green*, 187 Mich App 131, 136-137, 466 NW2d 388 (1991). Here, no attempt whatsoever was made to ascertain the current address of defendant upon the return of the notice of hearing. Obviously, such

> inaction is not characteristic of "one desirous of actually informing another." *Dow, supra* at 211. Further, this inaction is rendered more indefensible by the fact that defendant is a corporation required to maintain its current address with the Corporation and Securities Bureau.
>
> Therefore, because defendant did not receive adequate notice of the pending proceeding, the order granting summary disposition in favor of plaintiffs with respect to the complaint must be set aside. In addition, in light of the above, we conclude that summary disposition in favor of defendant was warranted. . . . [226 Mich App at 251-252.]

In light of that holding, the Court of Appeals said that it was unnecessary to consider the association's additional arguments about errors in some of the recorded legal descriptions.[3]

After the Court of Appeals denied rehearing, the plaintiffs filed an application for leave to appeal to this Court.

III

As noted, the Court of Appeals focused on the language from *Dow* that the state must employ, "such means 'as one desirous of actually informing [the property owner] might reasonably adopt' to notify [the owner] of the pendency of the proceedings." However, we must

---

[3] The state's affidavit regarding the notice of hearing and the deed from the state to the plaintiffs each include an error (though different ones) in their descriptions of the parcel.

keep in mind the context in which that statement was made. In *Dow* the question was whether notice by publication was sufficient.[4] After finding that notice by publication did not meet the constitutional standards, we went on to describe the kind of notice that would satisfy due process requirements:

> Personal service is not required. Notice by mail is adequate. Mailed notice must be directed to an address reasonably calculated to reach the person entitled to notice. Mailing should be by registered or certified mail, return receipt requested, both because of the greater care in delivery and because of the record of mailing and receipt or non-receipt provided. Such would be the efforts one desirous of actually informing another might reasonably employ. If the state exerts reasonable efforts, then failure to effectuate actual notice would not preclude foreclosure of the statutory lien and indefeasible vesting of title on expiration of the redemption period. [396 Mich at 211.]

Following our *Dow* decision, the Legislature enacted 1976 PA 292, adding additional notice provisions. See MCL 211.61b; MSA 7.106(1), MCL 211.73c; MSA 7.119(2),

---

[4] The statute in effect at that time also provided for notice by mail. However, as we explained:

> While the statute provides for mailed notice, there is no record of notice having been mailed or received in this case. The state does not contend that we should assume that notices were duly mailed; the statute's express statement that no consequence shall attach to non-mailing precludes any such contention. [396 Mich at 207.]

MCL 211.131c(1); MSA 7.190(1) (1); and MCL 211.131e(1); MSA 7.190(3) (1). With those changes, the General Property Tax Act now includes an extensive set of procedures for notice of the steps in the tax sale process.[5] These

---

[5] After the township has notified the county treasurer that the taxes are unpaid, the county treasurer is required to send two mailings regarding the delinquent taxes. One is within 120 days after receiving the statement of delinquency from the township. MCL 211.57(2); MSA 7.101(2). The other is to be within 120 days after March 1 in the year following failure to pay the taxes. MCL 211.57(3); MSA 7.101(3).

Three years after failure to pay the taxes, the property may be sold. The sale is to occur on the first Tuesday in May in the third year following nonpayment. MCL 211.60; MSA 7.104. The state treasurer files a petition in circuit court seeking what amounts to a show cause order. MCL 211.61; MSA 7.105. Notices are to be sent to those with interest in the property 30 days before the sale. MCL 211.61a; MSA 7.106. In addition, notice of the tax sale is subject to a newspaper publication requirement. MCL 211.62, 211.63; MSA 7.107, 7.108. Where the property has a street address, and a notice required by § 61a has not been sent to that address, or a notice was sent but was forwarded or returned as undeliverable, the statute provides for a mailing to "occupant." MCL 211.61b; MSA 7.106(1).

Following a tax sale, there are a series of redemption deadlines. One is a year after the tax sale. MCL 211.74; MSA 7.120. A notice is to be sent to persons holding an interest in the property at least 120 days before that date. MCL 211.73c(1); MSA 7.119(2) (1). Under certain circumstances, a mailing to "occupant" is also required. MCL 211.73c(2); MSA 7.119(2) (2). Title vests in the state one year after the tax sale if the property is not redeemed. MCL 211.67; MSA 7.112.

Another redemption period is the first Tuesday in November after title vests in the state. MCL 211.131c(1); MSA 7.190(1) (1). During that extended redemption period, a Department of Natural Resources agent is to make a personal visit to the property to ascertain whether or not it is occupied. If

procedures meet the requirements set forth in *Dow* and thus provide a constitutionally sound procedure for sale of property because of nonpayment of taxes.

The statute generally provides that mailed notice to the owner is to be at the owner's last known address.[6] In this case there is nothing to indicate that the township, county, or state had been informed of a new address for the association. Thus, it was appropriate for notices to be sent to the Birmingham address stated in the deed conveying the disputed parcel to the association. The fact that one of the mailings was returned by the post office as undeliverable does not impose on the state the obligation to undertake an investigation to see if a new address for the association could be located. We reject the contrary conclusion of *Consolidated Rail Corp. v Michigan, supra.*[7]

---

occupied, the DNR must attempt to personally serve the person occupying the land with a copy of a redemption notice. If the property is occupied and personal service cannot be accomplished a notice must be posted on the premises in a conspicuous manner. MCL 211.131c(5); MSA 7.190(1) (5). The parties to this case do not discuss this redemption deadline or the related notice requirement.

MCL 211.131e(1), (3); MSA 7.190(3) (1), (3) provides for the giving of a notice to all owners of significant interests in the property that a hearing will be conducted at which they may show cause why the tax sale should be canceled. That section provides an additional 30 days after the hearing to redeem. In this case, an affidavit recorded by the state indicates that the date of the hearing was December 28, 1981.

[6] E.g., MCL 211.44; MSA 7.87; MCL 211.61a(2); MSA 7.106(2).

[7] Courts in other jurisdictions have addressed similar questions about the obligation of taxing authorities to go beyond record information in an attempt to ascertain current

The Legislature has provided a notice procedure that meets constitutional standards. The Court of Appeals

---

addresses, finding no constitutional obligation to go beyond statutory requirements. In *Keiser v Young*, 181 AD2d 170, 585 NYS2d 880 (1992), the property owner contended that mailings were not sent to her correct address and that because certain notices were returned as "unclaimed," the county was required to take additional steps to achieve notice. The court rejected the claim, explaining:

> Pursuant to [Real Property Tax Law] 1002(4), notice of an impending tax sale is to be given to an owner of real property by first class mail at the address "shown on the assessment roll." Similar requirements apply to follow-up redemption notices (see, RPTL 1014[3]). Here, the uncontradicted proof in the record establishes that the mailing address for defendant shown on the relevant assessment roll and used by the County was the same as that contained in both defendant's deed to the property and the real property transfer report. . . . Thus, as in *Matter of Girrbach v Levine*, 132 AD2d 41, 522 NYS2d 276 [1987], the County was entitled to rely on the record information. In so doing, the County satisfied the mandates of due process by providing "notice reasonably calculated, under all the circumstances, to apprise [defendant] of the pendency of the [tax sale proceedings] and afford [her] an opportunity to present [her] objections" (*Mullane v Central Hanover Trust Co.*, 339 US 306, 314, 70 S Ct 652, 657, 94 L Ed 865 [1950]); see, *Mennonite Bd. of Missions v Adams*, 462 US 791, 103 S Ct 2706, 77 L Ed 2d 180 [1983]. . . . [181 AD2d at 173.]

Similarly, in *Dahn v Trownsell*, 576 NW2d 535 (SD, 1998), the court recognized that mailings to an owner's last known address cannot guarantee that the property owner receives actual notice in every case. However, it held that such a mailing, as provided by the South Dakota statute, was "'notice reasonably calculated, under all circumstances, to apprise

decision in this case constitutes an improper intrusion into the Legislature's authority to regulate tax sale proceedings. The courts lack the authority to create new notice requirements. The fact that another statutory scheme might appear to have been wiser or would produce fairer results is irrelevant. Arguments based on such policy considerations must be addressed to the Legislature. E.g., *People v McIntire*, 461 Mich 147, 159, 599 NW2d 102 (1999), *Oakland Co Bd of Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 612-613, 575 NW2d 751 (1998); *People v Kirby*, 440 Mich 485, 493-494, 487 NW2d 404 (1992). Similarly, the fact that the township might have sought out defendant's legal residence in a more thorough or conscientious manner is not relevant to our analysis, in light of the language of the statute.

Not only does the Court of Appeals decision infringe the authority of the Legislature, but it would also undermine the tax sale process. The principle underlying the Court of Appeals decision is that in some circumstances it is not enough to comply with the requirements of the General Property Tax Act, but that more must be done. However, exactly what that is will be different in every case. No matter what efforts are made to give notice, the owner who has not, in fact, been provided notice will always contend that something more could have been

---

interest[ed] parties of the pendency of the action and afford them an opportunity to present their objections,'" quoting *Mullane v Central Hanover Bank & Trust Co.*, *supra* at 314, 70 S Ct 652.

See also *Atlantic City v Block C-11, Lot 11*, 74 NJ 34, 376 A2d 926 (1977).

done. This will make the process of tax sales completely unpredictable, destroying the government's ability to recoup unpaid taxes by foreclosing and reselling. For due process purposes, the focus must be on the constitutional adequacy of the statutory procedure and not on whether some additional effort in a particular case would have in fact led to a more certain means of notice.

IV

The Court of Appeals improperly imposed notice requirements beyond those required by the Legislature. We thus reverse the judgment of the Court of Appeals. Because of its conclusion regarding the notice question, the Court of Appeals did not discuss other claims raised by the association. We therefore remand the case to the Court of Appeals for consideration of those issues.

/s/ Elizabeth A. Weaver

/s/ Clifford W. Taylor

/s/ Robert P. Young Jr

/s/ Maura D. Corrigan

/s/ Stephen J. Markman

KELLY, J. (*dissenting*).

I cannot join the majority in its opinion. In reversing the Court of Appeals decision, the majority elevates form over substance and achieves an unjust result. I would grant leave to consider whether the notice requirements

contained in Michigan's General Property Tax Act[1] satisfy the due process requirements imposed by the state and federal constitutions.

This case presents an important constitutional question that deserves a full hearing. A per curiam opinion is an inadequate vehicle to address it.

The facts presented by this case are troubling. Apparently, the Treasury Department complied with the letter of the notice statute when it mailed tax statements to the address for defendant that appeared on the tax rolls. From a technical standpoint, the General Property Tax Act required nothing more of the department. Yet, its failure, upon getting back undeliverable mailings to defendant, to obtain defendant's current address from its sister department, the Corporations and Securities Bureau, may well have been unreasonable under the Due Process Clause of the United States Constitution.

The mere fact that a statute prescribes detailed steps aimed at ensuring "reasonable notice" does not mean that conforming notice inevitably will be reasonable. The Legislature could not contemplate every conceivable circumstance. To survive constitutional scrutiny, the notice attempted must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of [state] action [against them] and afford them an opportunity to present their objections." *Mullane v Central Hanover Bank & Trust Co.*, 339 US 306, 314, 70 S Ct 652, 94 L Ed 865 (1950).

---

[1] MCL 211.1 *et seq.*; MSA 7.1 *et seq.*

In this case, the department's actions, while in technical compliance with the statute, did not give defendant notice and may have failed the reasonableness test imposed by *Mullane*. From the perspective of the corporate defendant, the majority's decision renders an unjust result. The defendant corporation, like the department, performed every act required of it by law. When it changed its corporate address and agent, it informed the appropriate state office.

The majority resolves the case in a way that deprives defendant of its property without it ever receiving actual notice that it owed taxes or of a tax foreclosure sale. Defendant had reason to believe it had paid all taxes due. It is difficult to reconcile such a result with the spirit of the statute, which strives to ensure reasonable notice and protect the constitutional rights of property owners.

In my view, the notice statute, inasmuch as it seeks to achieve reasonableness, may have required more from the state in this instance. When the department receives notice that its tax bills directed to a corporation are undeliverable at a certain address, reasonableness may require one more step: an inquiry to the Corporations and Securities Bureau to check for a current address. See, e.g., *Patrick v Rice*, 112 NM 285, 288, 814 P2d 463 (1991) ("Determining that the division complied with applicable notice statutes resolves only half the question on appeal. . . . [T]he notice of such [sale] must comply with minimum due process standards"); *O'Brien v Port Lawrence Title & Trust Co.*, 87 Ohio Misc 2d 10, 16, 688 NE2d 1136 (1997) (holding that, although the applicable statute was satisfied, due process was not); *Tracy v Chester Co.*,

Tax Claim Bureau, 507 Pa 288, 296-297, 489 A2d 1334 (1985).

The feasibility of requiring this step should be explored during this appeal. It may be revealed that requiring it would not turn the department into a sleuthing operation, nor have a devastating ripple effect on the title insurance industry. A full exploration of it might show that it would ensure reasonable notice under the narrow circumstances presented by this case.

The Court should follow the lead of the Court of Appeals and consider interpreting the statute to require this simple, common-sense step where a corporate change of address is involved. The department's inaction in this case may have failed to give the constitutionally required reasonable notice despite being in compliance with the statute. Therefore, the Court should grant leave to consider this important constitutional rights and property rights issue.

/s/ Marilyn Kelly
/s/ Michael F. Cavanagh

APPENDIX B

STATE OF MICHIGAN

COURT OF APPEALS

EARL D. SMITH and SUZANNE C. SMITH,

Plaintiffs-Appellees,

v

CLIFFS ON THE BAY CONDOMINIUM ASSOCIATION,

Defendant-Appellant.

FOR PUBLICATION
October 31, 1997
9:10 a.m.

No. 199498
Washtenaw Circuit Court
LC No. 96-006784 CH

Before Saad, P.J., and O'Connell and M. J. Matuzak*, JJ.

O'CONNELL, J.

Plaintiffs and defendant each claimed ownership of a particular piece of property. Plaintiffs filed suit to quiet title, seeking a declaration that they were the sole owners of the property. Defendant counterclaimed, seeking a declaration that *it* was the sole owner of the property. The circuit court granted plaintiffs' motion for summary disposition with respect to the complaint and simultaneously dismissed defendant's counterclaim. Defendant now appeals as of right. With respect to the complaint, we reverse the order of the court granting summary disposition in favor of plaintiffs and, pursuant to MCR

---

* Circuit judge, sitting on the Court of Appeals by assignment.

2.116(I)(2), grant summary disposition in favor of defendant. With respect to the counterclaim, we vacate the dismissal.

In July 1972, defendant recorded a deed for a large parcel of land that is now the site of defendant's condominium project. In October 1973, defendant received by quitclaim deed a smaller, adjacent parcel of land, this parcel being the object of the present controversy.

Defendant, apparently, dutifully paid the property taxes assessed with respect to the large parcel. However, defendant maintained below that it was not aware of the conveyance of the small parcel until many years later, believing this property to be part of the overall condominium project. Accordingly, defendant presumed that taxes paid on the large parcel also covered the small parcel. Although separate taxes had been assessed against the small parcel, defendant had received no separate tax notices and admittedly submitted no separate payment with respect to the taxes assessed against this distinct parcel. Consequently, the small parcel was deeded to the state in 1981 pursuant to § 67a of the General Property Tax Act, MCL 211.1 *et seq.*; MSA 7.1 *et seq.*

Defendant raised no defense to these proceedings and to the proceedings which followed because defendant was never notified that any proceeding had been initiated. In March 1982, the Michigan Department of Treasury attempted to notify defendant by certified mail that a hearing concerning the small parcel would be conducted in the near future. The Department of Treasury sent this notice of hearing to its last known address of

record. However, defendant, a corporation, had changed address several times during the intervening years, submitting its new address on each occasion to the Corporation and Securities Bureau. The notice of hearing was returned by the post office as "Not Deliverable as Addressed." The Department of Treasury took no further measure in attempting to contact defendant, but did record the notice with the Washtenaw County Register of Deeds.

In 1987, the state conveyed the small parcel to plaintiffs. By 1991, defendant had become aware of the confusion surrounding the small parcel, and soon filed an affidavit of interest in the small parcel. In 1996, plaintiffs commenced the present action, seeking a declaration that they were the true owners of the small parcel. Defendant counterclaimed, seeking an identical declaration in its own favor. Upon plaintiffs' motion for summary disposition, the circuit court concluded that the statutory notice requirements had been satisfied because the notice of hearing had been sent by certified mail to defendant's last known address and had been recorded with the register of deeds. Accordingly, the court granted summary disposition in favor of plaintiffs pursuant to MCR 2.116(C)(10) and dismissed defendant's counterclaim. Defendant now appeals as of right. Our review is de novo. *Pinckney Community Schools v. Continental Casualty Co.*, 213 Mich App 521, 525; 540 NW2d 748 (1996).

Defendant argues that the trial court erred in granting summary disposition in favor of plaintiffs where defendant had no actual notice of taxes due and where the notice of hearing regarding the disposition of defendant's property was sent to an outdated address.

The Due Process Clause, US Const, Am XIV; Const 1963, art 1, § 17, requires that an owner of a significant interest in property be given "proper notice" and an opportunity for a hearing before the state may take the property for nonpayment of taxes. *Dow v. Michigan*, 396 Mich 192, 196; 240 NW2d 450 (1976). Defendant, as legal titleholder to the property, undoubtedly had a significant interest in the property within the meaning of the Due Process Clause. As such, defendant was entitled to receive proper notice of the sale of the property in question.

The notice requirements for tax lien foreclosures in Michigan are set forth in the General Property Tax Act. MCL 211.1 *et seq.*, MSA 7.1 *et seq.*[1] Proceedings to foreclose a tax lien are commenced when a petition is filed with the circuit court for the county in which the delinquent tax land is situated. MCL 211.61; MSA 7.105. Notice must be sent to each person who, according to the county treasurer of each county in which a petition is filed, has an interest in the land. MCL 211.61a; MSA 7.106. The county treasurer shall mail the notice "by first-class mail, address correction requested, to each person, directed to his or her last known post office address with postage fully prepaid," at least thirty days prior to the sale *Id.* If the notice is forwarded or returned as undeliverable, the

---

[1] The act was amended in 1976 to heighten the requirements in regard to the notice that must be given to persons with an interest in property to be sold at a tax sale. The amendments were enacted in response to the Supreme Court's pronouncement in *Dow, supra*, 396 Mich 192. See *Brandon Township v Tomkow*, 211 Mich App 275, 282; 535 NW2d 268 (1995).

county treasurer must send it to the street address of the parcel of property a notice indicating that the property will be sold. MCL 211.61b; MSA 7.106(1). While failure of actual notice does not necessarily invalidate tax sale proceedings, MCL 211.61a; MSA 7.106(2), the state must exert reasonable efforts to provide notice. *Dow, supra* p 211.

Notice of delinquent taxes and notice by publication are not sufficient to satisfy due process requirements. *Mennonite Bd of Missions v Adams*, 462 US 791, 799-800; 103 S Ct 2706; 77 L Ed 2d 180 (1983). Instead, notice by mail "or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party . . . if its name and address are reasonably ascertainable." 462 US 800. In *Dow, supra* at 211, the Court held that "an elementary and fundamental requirement of due process in the proceeding which is to be accorded finality is notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.*, pp 205-206. The Court determined that notice by mail is adequate if "directed at an address reasonably calculated to reach the person entitled to notice." *Id.* The Court noted that "[s]uch would be the efforts one desirous of actually informing another might reasonably employ. If the state exerts reasonable efforts, then failure to effectuate actual notice would not preclude foreclosure of the statutory lien and indefeasible vesting of title on expiration of the redemption period." *Id.* (Footnote omitted).

In the present case, defendant did not receive notice sufficient to satisfy due process concerns. Plaintiffs do not contend that defendant received actual notice, but assert that the attempts to notify defendant of the pending proceedings were sufficient. However, in a similar case, the Federal District Court, applying Michigan law, stated that "[i]f tax bills are returned, it would be reasonable to expect to obtain the correct address of the property owner." *Consolidated Rail Corp v Michigan*, ___ F Supp ___ (WD Mich, 1996) 1996 US Dist Lexis 19331, citing *City of Grand Rapids v Green*, 187 Mich App 131, 136-137; 466 NW2d 388 (1991). Here, no attempt whatsoever was made to ascertain the current address of defendant upon the return of the notice of hearing. Obviously, such inaction is not characteristic of "one desirous of actually informing another." *Dow, supra* at 205. Further, this inaction is rendered more indefensible by the fact that defendant is a corporation required to maintain its current address with the Corporation and Securities Bureau.

Therefore, because defendant did not receive adequate notice of the pending proceeding, the order granting summary disposition in favor of plaintiffs with respect to the complaint must be set aside. In addition, in light of the above, we conclude that summary disposition in favor of defendant was warranted in this context pursuant to MCR 2.116(C)(10) and (I)(2). As a matter of law, plaintiffs are not entitled to the relief they seek. With respect to defendant's counterclaim, we vacate the order of the circuit court dismissing the counterclaim, an order which was premised on its disposition of the complaint. Defendant will be free to move for summary disposition

pursuant to MCR 2.116(C)(10) with respect to its counter-claim.

Defendant also claims on appeal that the trial court erred because the notice of hearing was defective as it contained an erroneous description of the property. Because we conclude that the notices of hearing and redemption were deficient, we do not need to address this question.

Defendant's final issue on appeal concerns whether the trial court erred in relying on the equitable doctrine of laches as one of the reasons for granting plaintiffs' motion for partial summary disposition. The trial court apparently felt that defendant was at fault for failing to redeem its interest in the subject property within the five-year statutory limitation period under MCL 211.98; MSA 7.151.[2] This determination ignores the fact, however, that if the notice was insufficient, the transfer of title to the state is void. Section 211.131e(1) of the Tax Act provides that the "redemption period on property deeded to the state . . . shall be extended until the owners of a recorded property interest in the property have been notified of a hearing before the department of treasury." MCL 211.131e(1); MSA 7.190(3)(1). If the state fails to provide proper notice, an owner's "right of redemption survive[s] the change in title resulting from the original tax sale, the deeding to the state and the subsequent sale" to a third party. *Brandon Twp v Tomkow*, 211 Mich App 275, 284; 535 NW2d 268 (1995). Because we conclude that defendant

---

[2] The court merely hinted at the concept of laches, noting that "after this very, very late date suddenly now someone wants to come in and claim that they have the right to redeem."

did not receive proper notice of its right to a hearing or its right to redeem, the doctrine of laches does not apply.

Reversed in part, vacated in part.

/s/ Peter D. O'Connell
/s/ Henry William Saad
/s/ Michael J. Matuzak

APPENDIX C

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR
THE COUNTY OF WASHTENAW

EARL D. SMITH and
SUZANNE C. SMITH,

Plaintiffs,

vs.

CLIFFS ON THE BAY
CONDOMINIUM
ASSOCIATION,

Defendant.

File No. 96-6784-CH
Hon. Timothy P.
Connors

Ian James Reach (P25316)
REACH & HOLLENSHEAD
(AF 1258)
Attorney for Plaintiffs
The Earle Building, Suite 300
121 Washington Street
Ann Arbor, MI 48104
(313) 994-1400

Robert M. Meisner (P17600)
MEISNER & ASSOCIATES, P.C.
Attorney for Defendants
30200 Telegraph, Suite 467
Bingham Farms, MI 48025-4506
(810) 644-4433

ORDER GRANTING PARTIAL
SUMMARY JUDGMENT

At a session of said Court, held in the City of

Ann Arbor, County of Washtenaw, State of Michigan, this 13th day of August, 1996.

PRESENT: Honorable Timothy P. Connors
Circuit Court Judge

This matter having been presented upon Plaintiff's Motion for entry of an Order Granting Plaintiff Partial Summary Disposition and the Court having considered the pleadings filed herein and the oral argument of counsel;

Now therefore, it is hereby ordered and adjudged as follows:

A. This Court's Order of July 16, 1996, granting partial summary judgment is set aside *nunc pro tunc*; and

B. The Deed to Plaintiffs, recorded on or about November 13, 1987 at Liber 2189, Page 003, Washtenaw County Records, was a proper and valid conveyance of the premises described therein; and

C. Plaintiffs hold title free of any rights therein in favor of Defendant; and

D. Defendant's Counter-Claim is hereby dismissed with prejudice; and

* * *

/s/ Timothy P. Connors
Honorable Timothy P. Connors
Circuit Court Judge

Prepared by:
REACH &
HOLLENSHEAD
By: /s/ Ian James Reach
Ian James Reach
(P25316)

Attorney for Plaintiffs
The Earle Building,
Suite 300
121 West Washington Street
Ann Arbor, MI 48104
(313) 994-1400

Approved as to form:
MEISNER & ASSOCIATES,
P.C.
By: _____
Robert M. Meisner
(P17600)

Attorney for Defendants
30200 Telegraph, Suite 467
Bingham Farms, MI
48025-4506
(810) 644-4443

APPENDIX D

Michigan Supreme Court
Lansing, Michigan

Elizabeth A. Weaver
Chief Justice

Michael F. Cavanagh
Marilyn Kelly
Clifford W. Taylor
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Order
Entered: December 4, 2000

Rehearing No. 457

EARL D. SMITH and
SUZANNE C. SMITH,

Plaintiffs-Appellants,

v

CLIFFS ON THE BAY
CONDOMINIUM
ASSOCIATION,

Defendant-Appellee.

SC: 111587
COA: 199498
LC: 96-6784-CH

In this cause, a motion for rehearing is considered, and it is hereby DENIED.

Cavanagh and Kelly, JJ., would grant rehearing.

[SEAL] I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 4, 2000 /s/ Corbin R. Davis

Clerk

APPENDIX E

CONSTITUTIONAL PROVISIONS AND STATE STATUTES INVOLVED

The Fourteenth Amendment to the United State Constitution provides:

Amendment XIV, Section I

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Michigan statutes requiring corporations and non-profit corporations to provide information to the State on an annual basis provide as follows:

> Sec. 911. (1) A domestic corporation and each foreign corporation subject to chapter 10 shall file a report with the administrator no later than May 15 of each year. The report shall be on a form approved by the administrator, signed by an authorized officer or agent of the corporation, and contain all of the following information:
>
> (b) The name of its resident agent and address of its registered office in this state.

M.C.L.A. § 450.1911(1)(b) (West Supp. 2000).

> Sec. 911. Each domestic corporation or each foreign corporation authorized to conduct

affairs in this state shall file a report with the administrator on or before October 1 of each year. The report, on a form approved by the administrator, shall contain the following:

(b) Name of resident agent and address of its registered office in this state.

M.C.L.A. § 450.2911(b) (West 1990).
